

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

-----x
DAVIS INTERNATIONAL, LLC, HOLDEX, :
LLC, FOSTON MANAGEMENT, LTD, and :
OMNI TRUSTHOUSE, LTD, :
: Plaintiffs, :
v. : Case No. 04-1482-GMS
: :
NEW START GROUP CORP., VENITOM :
CORP., PAN-AMERICAN CORP., MDM :
BANK, URAL-GORNO METALURAGICAL :
COMPANY, EVRAZ HOLDING, MIKHAIL :
CHERNOI, OLEG DERIPASKA, ARNOLD :
KISLIN, MIKHAIL NEKRICH, and :
ISKANDER MAKMUDOV, :
: Defendants. :
-----x

**APPENDIX TO DEFENDANTS'
OPENING BRIEFS IN SUPPORT OF
DEFENDANTS' MOTION TO DISMISS THE COMPLAINT**

Volume 6 of 13

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**DEFENDANTS'
POST-ARGUMENT
SUBMISSIONS**
2-25-03

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February 25, 2003

BY HAND

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**Re: Base Metal Trading SA, et al. v. Russian Aluminum, et al.
00 Civ. 9627 (JGK)**

Dear Judge Koeltl:

On behalf of all defendants, this letter is submitted in reply to the submission made by plaintiffs on February 20, 2003.

At the oral argument of defendants' motions to dismiss, the Court asked the parties to (a) amplify information in the record on "the plaintiffs who are U. S. companies," (b) provide information regarding "the contracts of MIKOM and Nexis," and (c) elaborate on Russian law and procedure concerning "the issue of is there a claim . . . of RICO, fraud, or whatever . . .".¹

U. S. PLAINTIFFS

The particulars of the U. S. plaintiffs are at issue here because of the Second Circuit's statement in *Iragorri* that a plaintiff's connection to the United States must be "*bona fide*".² In the instant action, there are 10 plaintiffs. The three original plaintiffs are Swiss, Channel Islands and Cyprus companies whose beneficial owners are the Zhivilo brothers, both Russians. MIKOM is a Russian company, also beneficially owned by the Zhivilos.³ That

¹ Transcript of oral argument, February 10, 2003 ("Tr. p. __"), pp. 100-01, Ex. 1 hereto.

² *Iragorri v. United Technologies*, 274 F. 3d 65, 73 (2d Cir. 2001) (en banc).

³ See Letter dated January 23, 2003 from Michael D. Burrows to the Court, pp. 3-4, citing Zurich Arbitration Award, p. 135-6. Ex. 2 hereto.

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disposes of the citizenship of the so-called Aluminum Plaintiffs and \$900 million of the Amended Complaint's claimed damages of \$ 1 billion.

Of the other six plaintiffs -- the so-called GOK Plaintiffs that were added by amendment -- Foston is a Cyprus company, Omni is English and Polyprom is Russian. Second Amended Complaint ¶¶ 34, 35, 38. The Court's questions in the context of the *forum non* motion, were, therefore, directed to the remaining three plaintiffs: Davis, Holdex and Nexis, respectively incorporated in West Virginia, Texas and Utah, states with no apparent links to plaintiffs' claims of corruption in the Russian court system.

To answer the Court's inquiry, plaintiffs offer the Second Declaration of Joseph Traum, dated February 19, 2003.⁴ Traum, a citizen and resident of Israel, admits now that he is the beneficial owner of plaintiff Nexis⁵, although he did not disclose that interest in his first Declaration, dated September 14, 2002. He admits further that two other Israelis, Simha Eizenberg and Dov Rieger, are the beneficial owners of plaintiff Holdex.⁶ Thus, there is no U. S. ownership of nine out of the ten plaintiffs, leaving only Davis International, LLC.

Traum fails to identify the beneficial owners of Davis; rather, he uses different terminology. He states that he and Sara Ofen, allegedly a U. S. citizen, are the "members" of Davis.⁷ In his first Declaration, Traum said that, "Davis' beneficial owners include one American citizen,"⁸ but he did not disclose the identity of that person, nor did he disclose his own beneficial interest as a "member." If he now intends to say that he and Sara Ofen, as "members," are the beneficial owners of Davis, the Court is left with one of six GOK plaintiffs -- plaintiffs whose claims together total \$ 100 million out of a total of \$ 1 billion -- the beneficial owners of which are an Israeli citizen and a U. S. citizen. Ms. Ofen, who was not identified in Traum's first Declaration, is described only as a person who speaks fluent English, does not speak Russian and is afraid to travel to Russia because of alleged threats on Traum's life.⁹ Traum does not tell us where she lives or what her ownership percentage is.

Significantly, there is no affidavit from Ms. Ofen herself.

Traum's new Declaration, in the face of the Court's specific requests, is striking for what it does not say. Traum does not assert that any of these companies have real places of business or actual operations in the United States, or anywhere else. They have only "registered

⁴ "Traum 2d Decl. ¶ ____."

⁵ *Id.* ¶ 33.

⁶ *Id.* ¶ 27.

⁷ *Id.* ¶ 12.

⁸ Declaration of Joseph Traum, dated September 14, 2002, ¶ 10.

⁹ Traum 2d Decl. ¶¶ 12, 13, 20.

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addresses," which are the addresses of the service companies used to form the corporations (see discussion *infra*). Traum identifies only a single officer of these plaintiffs, Isaac Savion. Savion is alleged to be a U. S. citizen -- but apparently not a resident -- and an officer of Davis and also of Nexis. Traum does not tell us where Savion lives or what offices he holds with Davis and Nexis; nor does he describe Savion's duties or responsibilities for either of the companies. Traum only tells us that Savion speaks fluent English, does not speak Russian and is not willing to travel to Russia because of threats to Traum "and the warnings of the Israeli police."¹⁰ However, there is no affidavit from Mr. Savion himself, which presumably could identify the other officers (and directors) of these companies, describe the day-to-day business operations of Davis and elaborate on Nexis' plans to "refurbish electronic products in San Diego."¹¹ Mr. Savion could describe for us these companies' actual places of business, how many employees they have, their revenues from U. S. operations and other significant U. S. contacts.

Finally, there is no affidavit at all from an officer or beneficial owner of Holdex.

Plaintiffs' unwillingness to provide the information the Court has asked for leads to the inescapable conclusion that these U. S. corporations, Davis, Holdex and Nexis, are exactly what the defendants have claimed they are: shell companies without any *bona fide* connection to this forum, or even to the United States in general. Moreover, Plaintiffs' half-hearted attempt to argue that these Plaintiffs should be afforded the same degree of deference as U.S. plaintiffs actually residing in the U.S. because of international treaties is not only a stretch, but also a misstatement of current *forum non conveniens* law:

This line of treaty cases requiring 'equal access' to foreign plaintiffs is, however, easily harmonized with the line of cases granting less deference to plaintiffs residing overseas . . . Foreign plaintiffs deserve less deference, not because they lack U.S. citizenship, but simply because their overseas residence vitiates any presumption that they would find the U.S. forum convenient.

Varmelo v. Eastwind Transport, Ltd., No. 02-Civ. 2084, 2003 WL 230741, *12 (S.D.N.Y. Feb. 3, 2003).

Nexis Products, LLC

Nexis was formed by two Panamanian companies, Saturn Investment Group, S.A. and Star Group Finance and Holdings, Inc., both having the same address in Panama City, Panama. Ex. 3 hereto. Its registered agent is All-Search & Inspection, Inc., 1108 E. South

¹⁰ *Id.* ¶¶ 14, 15, 20, 40, 41.

¹¹ *Id.* ¶ 36.

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Union Ave., Midvale, Utah (Ex. 5 hereto), which is the same address that Joseph Traum gives for Nexis in his Declaration.¹² All-Search resigned as Nexis' registered agent on 3-19-98 and Nexis was involuntarily dissolved on 12-01-98 (Ex. 4 hereto). The company was reinstated by the Utah Department of Commerce on 2-29-00 (Ex. 5 hereto).

Traum states that Nexis used nominee members "for the same reasons and in the same manner" as Davis and Holdex,¹³ i.e., "solely for organizational purposes; they played no role in the operational management of the company."¹⁴ Nevertheless, four years after the company was formed, Saturn Investments was still acting on its behalf; it signed the "Application for Reinstatement." (Ex. 5 hereto). Also, these alleged "nominee members" signed the Power of Attorney dated November 20, 2000 giving Marina Ashikmina authority to pursue Nexis' claims in Russian courts.¹⁵ One of the signatories to the aforementioned Power of Attorney, Sydney Tavarez of Star Group, also signed the July 13, 1999 Loan Agreement between Nexis and GOK; that Agreement identifies Mr. Tavarez as a "Director" of Nexis. The Loan Agreement is Exhibit 91 to the Declarations of Oleg S. Kozyrev and Samir Kapoura, submitted in support of defendants' motions to dismiss. It is also Exhibit 4 to Traum's Second Declaration.

Davis International, LLC

Davis was also formed by Star Group Finance and Holdings, Inc. and Saturn Investments Group, S.A., the same Panamanian companies that formed Nexis. Ex. 7 hereto. The company's address, 1205 Wilkie Drive, Charleston, West Virginia, is the address of its registered agent (Ex. 7, ¶¶ fourth and fifth) and also the same as that given by Traum for Davis.¹⁶ Traum states that Sara Ofen is a "member" and Isaac Savion is an "officer".¹⁷ However, corporate search records as of February 12, 2003, do not list either Ms. Ofen or Mr. Savion. Ex. 8 hereto. The records identify only Mr. Traum as a member:

JOSEPH M. TRAUM
 48 HAAGIVA STR.
 SAVYON, 56000
 ISRAEL

¹² Traum 2d Decl. ¶32.

¹³ Traum 2d Decl. ¶31.

¹⁴ Traum 2d Decl. ¶5.

¹⁵ See Ex. 27 to the Declaration of Marina Ashikmina, dated September 12, 2002. Ex. 6 hereto.

¹⁶ Traum 2d Decl. ¶7.

¹⁷ Id. ¶ 12, 14.

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Holdex, LLC

Holdex was formed in 1999 by Star Group Finance and Holdings, Inc. (the same company that set up Nexis and Davis) and WorldFund, Inc., both of the same address in Panama City. Ex. 9 hereto. Its registered agent is ChoicePoint Services, Inc., 707 W. 7th Street, Austin, Texas -- the same address that Traum gave for the company in his Declaration. Ex. 9 hereto. The "Certification of Account Status" obtained from Texas on 2/13/2003 lists Star and WorldFund as Managers (MM). Ex. 10 hereto. The same report retrieved on 2/21/2003 lists Simha Eizenberg of Budapest, Hungary as the only Director of Holdex. Ex. 11 hereto. Star and WorldFund are no longer listed on the Certification of Account Status (Ex. 11).

THE CONTRACTS OF MIKOM AND NEXIS

At the February 10th oral argument, Your Honor asked the parties to make submissions regarding "a couple of contracts . . . [o]ne is any contract between Mikom and NKAZ. And another is any contract between Nexis and GOK . . ."¹⁸ Your Honor was interested in reviewing "any choice of law or forum or arbitration clause" in those contracts.¹⁹

MIKOM and NKAZ

Although it may not have been clear at the oral argument,²⁰ the contracts between NKAZ and MIKOM (comprised of one contract and two amendments) were already submitted with defendants' moving papers as Exhibits 1, 2 and 3 to Mr. Chernyshev's Declaration of January 27, 2002.²¹ In addition, in response to Your Honor's request, defendants prepared a chart summarizing the contracts between NKAZ and MIKOM (as well as contracts between NKAZ and BMT S.A., BMT Ltd., and Alucoal). That chart was submitted on February 20th and specifies both the forum selection and choice of law for each of the contracts. As the chart clearly shows, none of the contracts selected the United States as a forum, nor did they dictate that U.S. law would apply.

The MIKOM/NKAZ contracts are numbers 1, 2 and 3 on defendants' chart.²²

While the plaintiffs also submitted a chart, they noticeably neglected to include the NKAZ/MIKOM contracts, as specifically requested by the Court.²³ Instead, they make

¹⁸ Tr. pp. 77-8, 100; Ex. 1 hereto.

¹⁹ Id. at 100; Ex. 1.

²⁰ See Tr. pp. 77-78, Ex. 1.

²¹ Declaration of Sergei Chernyshev, dated January 27, 2002, Exs. 1, 2, 3.

²² That page of the chart is reproduced as Exhibit 12 hereto.

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passing reference to the contracts in footnote 3 of Mr. Bernard's February 20th letter. In the footnote, plaintiffs admit that the contract between NKAZ and MIKOM contains a forum selection clause for the Arbitrash Court in Moscow, but attempt to excuse MIKOM from its agreed choice of forum by claiming that the contract was "entered into at a time when defendants had not infiltrated either NKAZ or GOK and had not corrupted judicial proceedings involving either plaintiff."²⁴

The chart submitted by plaintiffs (Exhibit A to Mr. Bernard's letter) lists only the contracts between NKAZ and BMT S.A., BMT Ltd. and Alucoal. In addition, the chart specifies only the forum selection and not the choice of law provisions. Nevertheless, even the plaintiffs' chart confirms that the U.S. was not a specified forum in any of those contracts. Defendants' chart, on the other hand, lists all of the contracts -- the BMT SA, BMT Ltd. and Alucoal contracts, as well as the MIKOM contracts -- and shows clearly that a U.S. forum or U.S. law was never chosen by the parties.

Nexis and GOK

Mr. Bernard's February 20, 2003 letter to Your Honor also stated, "as set forth in the accompanying Traum declaration, and summarized in the chart, contracts related to the claims brought by the US plaintiffs, though not cited in the Amended Complaint, contain New York forum selection clauses."²⁵

The chart attached as Exhibit A to Mr. Bernard's letter lists 22 contracts between NKAZ and plaintiffs BMT SA, BMT Ltd. or Alucoal, none of which according to plaintiffs' own chart, selects a U.S. court as the appropriate forum. Plaintiffs' chart, however, also lists six contracts and two purported amendments involving the GOK plaintiffs, most of which purportedly select "Courts of New York State" in their forum selection clause.²⁶ With one exception, all of the purported GOK plaintiffs' contracts were not contracts between a plaintiff and a defendant, but rather, contracts between two GOK plaintiffs, or between a GOK plaintiff and a third party from whom plaintiffs purportedly obtained their shares.²⁷ Thus, their supposed choice of forum has no relevance to this lawsuit. Moreover, plaintiffs have failed to include numerous additional contracts involving GOK and the plaintiffs which do not select New York as the forum. Those contracts are listed in the chart submitted by defendants to the Court on February 20, 2003.

²³ Tr. pp. 77, 100, Ex. 1.

²⁴ Letter of James L. Bernard, February 20, 2003 ("Bernard Letter"), p. 4, footnote 3.

²⁵ Id. at 4.

²⁶ Id. at Ex. A at 3-4.

²⁷ Id.

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Of the "GOK" contracts listed by plaintiffs, only one purported Amendment to one contract regarding a \$13 million loan, is between a plaintiff and a defendant in this lawsuit. Plaintiffs, for the first time, present this alleged Amendment dated November 25, 1999, to the July 13, 2000 Loan Agreement between Nexis and GOK.²⁸ This purported Amendment alters the choice of forum from the Arbitrash Court for the City of Moscow, which was selected in the July 13, 1999 Loan Agreement. This purported Amendment provides instead that "the parties deem the jurisdiction of the US Courts as a proper forum," and that "[a]ll the disputes, including without limitation claims of breach of agreement, fraud in the inducement and negligence, shall be adjudicated in a court of the State of New York, USA."²⁹ It also alters the choice of law from Russian law to "the laws of State of New York (sic) and Federal Laws of the United States."³⁰

This purported Amendment is noteworthy in several respects:

1. Plaintiffs have never before referred to this Amendment, in their original Complaint, First Amended Complaint, or Second Amended Complaint, in their voluminous brief, declarations and exhibits in opposition to defendants' motions to dismiss, in any of their letters to the Court, in any of their submissions to Magistrate Judge Maas or the telephone conferences with Magistrate Judge Maas on discovery issues, in any of the conferences with this Court, or in the February 10, 2003 oral argument.

2. This purported Amendment is provided by plaintiffs as Exhibit B to Mr. Bernard's letter, and as Exhibit D to the Declaration of Mr. Traum dated February 19, 2003. Mr. Traum did not make any mention of this Amendment in this earlier Declaration to this Court, dated September 14, 2002. Indeed, in his earlier declaration, which Mr. Traum submitted on behalf of plaintiff Davis, Mr. Traum failed even to reveal that he is the beneficial owner of Nexis. This alleged Amendment between Nexis and GOK, is dated "New York, 25th of November 1999" and appears to be signed by Mr. Traum for Nexis and by Mr. Khaidarov for GOK. Mr. Khaidarov also does not mention this Amendment in either of his declarations, dated April 15, 2002 and September 15, 2002.

3. Mr. Traum does not state whether he signed this Amendment, nor suggest where the Amendment was signed, notwithstanding the reference in the Amendment to "New York, 25th of November, 1999."³¹

4. This purported Amendment was signed at a time period when Nexis had been dissolved. Nexis was involuntarily dissolved on December 1, 1998 for failing to file an

²⁸ Traum 2d Decl. Ex. 4; Bernard Letter Ex. B.

²⁹ Bernard Letter Ex. B at 1.

³⁰ Id.

³¹ Traum 2d Decl. Ex. 4 at 1.

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annual report. Ex. 4 hereto. Nexis applied for reinstatement with the State of Utah Department of Commerce on February 5, 2000. Ex 5 hereto.

5. The purported Amendment appears to have no other purpose: as described by Mr. Traum, the Amendment "affirmed the outstanding balance owed" under the July 13, 1999 Loan Agreement.³²

6. Plaintiffs do not even bother to suggest to the Court why this purported Amendment -- which appears to have no relevance, other than its supposed forum selection clause -- has never been referred to before by the plaintiffs in the 26 months that this litigation has been pending.

7. Assuming the document is genuine, no explanation is offered as to why GOK, a Russian vanadium company, and Davis, a Utah shell corporation with an Israeli as its sole beneficial owner and no officers, directors, employees or operations in the U.S., but with a plan "to open a center in San Diego, CA to refurbish electronic products," would select New York as a forum.³³

8. Finally, if the Amendment is authentic, it still only deals with a \$13 million loan in the context of a \$1 billion lawsuit and should have no impact.

CLAIMS UNDER RUSSIAN LAW

As the Court knows from defendants' post-argument submission on February 20th, the applicability of Russian law to the claims alleged by plaintiffs was addressed by Professors Stephan and Petrukhin in their Declarations submitted with defendants' moving papers in January, 2002.³⁴ In defendants' February 20th submissions, both Professors confirm and elaborate on the opinions set forth in their earlier declarations. Professor Stephan states:³⁵

I conclude that Russian law provides Plaintiffs with causes of action covering injury from fraud, that it currently provides Plaintiffs with several avenues for overturning those court judgments that they claim caused them harm, that it permits Plaintiffs significant discretion over which court will hear their claim, and that it provides Russian courts with all the means necessary (including the power to compel testimony and to submit

³² Traum 2d Decl. ¶ 39.

³³ Traum 2d Decl. ¶ 36.

³⁴ See Decls. of Paul B. Stephan, January 28, 2002, ¶¶ 22-24 and Igor L. Petrukhin, January 26, 2002, ¶¶ 23-34.

³⁵ Declaration of Paul B. Stephan, dated February 19, 2003, ¶ 2.

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testimony to critical challenge) for a full consideration of Plaintiffs' claims, in particular those based on fraud.

Citations omitted. In his Third Declaration, Prof. Petrukhin affirms the same conclusion:³⁶

2. I was asked to deliver an expert opinion on whether the substantive and procedural Russian law provides a cause of action in Russia based on the claims on the Amended Complaint.

3. As I stated in my Declaration of January 26, 2002, I give a positive answer to the raised question. This Declaration answers this question in more detail, and also with respect to one available avenue of redress, how, where and in what order the claims of the Plaintiffs might be satisfied....

Plaintiffs, however, rather than relying on their previous expert, Ethan S. Berger (who agreed with Profs. Stephan and Petrukhin), have suddenly found a new expert whose declaration is included with plaintiffs' post-argument submission.³⁷ Sergey B. Zaitsev disagrees with the previous opinions of Professors Stephan and Petrukhin.

It is important to note that until the Court raised the specific point at issue and focused the plaintiffs on the Russian causes of action, procedure and venue, plaintiffs' previous expert did not dispute the conclusions reached by Professors Stephan and Petrukhin. In defendants' reply papers, we noted that plaintiffs' then expert, Mr. Berger, did not even contest that Russian law provides analogous causes of action and adequate remedies for all of Plaintiffs' claims.³⁸ In his Declaration, dated September 15, 2002 ("Berger Decl."), submitted in opposition to defendants' motions to dismiss, Mr. Berger stated:

While I am in general agreement with [Professors Stephan, Petrukhin and Zankovsky's] discussion of Russian black letter law, I am troubled by their suggestions that the Russian judiciary operates in the idealized manner envisioned by the Russian Constitution, relevant laws and related normative acts. All their analyses lack the intellectual skepticism, which one might otherwise expect. Burger Decl., ¶ 75.

³⁶ Declaration of Igor L. Petrukhin, dated February 19, 2002, ¶¶ 2-3.

³⁷ Declaration of Sergey B. Zaitsev, dated February 19, 2003 ("Zaitsev Decl.").

³⁸ Reply Memorandum of Law In Support Of Motion To Dismiss The Second Amended Complaint On Forum Non Conveniens Grounds, submitted October 21, 2002, at 18.

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I believe that it is highly likely that the Plaintiffs will find that they have rights but no real remedies. Burger Decl., ¶ 96.

I do not disagree with much of what Petrukhin says about black letter Russian law; but again the law in Russia, as embodied in the Constitution of the Russian Federation, legislation and other normative acts, can at present be best understood as representing a declaratory goal. Burger Decl., ¶ 100.

(emphasis added). Mr. Burger also submitted an expert Declaration on behalf of the plaintiff in the Denver case (represented by lead counsel here, Mr. Marks) and did not express any contrary view.³⁹ At ¶ 54 of his Expert Witness Statement in Denver, Mr. Burger makes the same statement as set forth above:

While I am in general agreement with Prof. Stephan's discussion of Russian black letter law.

I am troubled by his suggestion that the Russian judiciary operates in the manner envisioned by the Russian Constitution, relevant laws and related normative acts. His analysis lacks skepticism, which one might expect from someone with an extensive background in Soviet/Russian studies.

Emphasis added. At ¶ 55 of his Statement in Denver, Mr. Burger goes even further and states affirmatively, and categorically, that a Russian court would "exercise jurisdiction over the present dispute":⁴⁰

The question in my mind is not whether a Russian court would exercise jurisdiction over the present dispute (it not only could but would probably want to), it is whether [the plaintiff] would get a fair hearing of its claims.

Plaintiffs use Mr. Zaitsev's Declaration to make new allegations of corruption in the Moscow Arbitrash Court,⁴¹ notwithstanding the fact that, during oral argument, Your Honor specifically rejected plaintiffs' request to supplement their voluminous submissions by adding

³⁹ Expert Witness Statement of Ethan S. Burger, dated May 21, 2002, attached as Ex. B to the Reply Declaration of Michael D. Burrows, dated October 21, 2002.

⁴⁰ The Denver Complaint that Burger was addressing sought \$1.2 billion based on seven claims for relief: fraud and aiding and abetting fraud, breach of contract, intentional interference with contractual relations, civil conspiracy, breach of duty of good faith and fair dealing, breach of fiduciary duty and aiding and abetting breach of fiduciary duty, unjust enrichment and injunctive relief.

⁴¹ Zaitsev Decl., ¶¶ 86-96.

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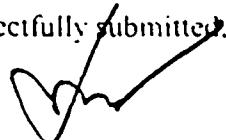
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purported new evidence of corruption in Moscow or elsewhere.⁴² The Court should disregard these new allegations.⁴³

Finally, annexed hereto as the last Exhibit is the Reply Declaration of Professor Stephan. This Declaration speaks for itself, but is particularly noteworthy for its consistency. Professors Stephan and Petrukhin have provided eight Declarations between them⁴⁴ and remain confident that Russian law provides adequate remedies -- in terms of substance, procedure and venues -- for plaintiffs if they choose to so avail themselves.

But the plaintiffs have chosen not to pursue their claims in Russia. Rather, they hide behind shell corporations and claims of corruption, unfairness, irrational court decisions and the alleged unwillingness of witnesses to travel to Russia because of alleged threats on the life of Joseph Traum as allegedly conveyed to them by the Israeli police. Plaintiffs come here, to the Southern District of New York, in an attempt to re-litigate 120 cases they have already lost (and won) in the country where all of the events occurred and where the subject matter of their claims is located: The Russian Federation. They are nothing more than disgruntled litigants, whose names are legion.

Respectfully submitted,



Michael D. Burrows
On behalf of all Defendants

MDB:dkm

cc: James L. Bernard, Esq. - Stroock & Stroock & Lavan LLP (by hand)
Raymond Hannigan, Esq. - Herrick Feinstein LLP (by hand)
Bruce S. Marks - Marks & Sokolov (by Fed Ex)
Defendants' counsel (by Fed Ex)

⁴² Tr., p. 100, Ex.1.

⁴³ Plaintiffs also use the last paragraph of Traum's Second Declaration to gratuitously malign two of the individual defendants and again bring the "Russian Mafia" into this case. Traum's statements are unsubstantiated, irrelevant and should also be disregarded.

⁴⁴ May 2001, January 2002, October 2002, February 19, 2003 and February 25, 2003.

1 Honor, that information about how they came to this conclusion,
2 information about specifically what data they reviewed, what
3 analysis was performed, and those kinds of factors that go into
4 making this kind of a statement in a legal document in the
5 United States is relevant to the very question of to what
6 degree are defendants able to influence proceedings.

7 And in connection with the balancing inquiry, I think
8 it's a factor that the Court should consider when we talk about
9 the claims of corruption, when we have set forth evidence in
10 our papers in terms of corruption, because it's not just things
11 that we're saying. It's things that the defendants have said.

12 Now, —

13 THE COURT: Could I —

14 MR. BERNARD: Yeah. Yes, Your Honor.

15 THE COURT: There are a couple of contracts, at
16 least, that — and I raise this because it's relevant to the
17 disclosure in — in an American securities offering. There are
18 a couple of contracts which it struck me are particularly
19 relevant in the papers. One is any contract between Mikom and
20 NKAZ. And another is any contract between Nexis and GOK,
21 because both of those are, at least as I understand it, alleged
22 to have been wrongly abrogated.

23 MR. BERNARD: Um hmm.

24 THE COURT: And there may be more. But are those
25 contracts in the papers themselves somewhere?

1 MR. BERNARD: Your Honor, as I stand here now, I
2 don't believe they are. It —

3 THE COURT: I didn't think so, because one of the
4 issues that's raised by the defendants is that the very
5 contracts at issue may contain forum selection clauses,
6 arbitration clauses, and it may well be useful to put them in
7 the record one way or another, and it raises the issue —
8 plainly, a securities disclosure in the United States is meant
9 to provide potential investors with a fair representation of
10 all of the risks of — of such an investment.

11 At the time that these investments were made, it was
12 another time in Russia. And you can correct me if I'm wrong.
13 Would it not be a fair consideration to say that people — that
14 non-United States citizens investing in Russia at the time
15 would reasonably expect to get what relief was available in
16 Russia?

17 The disclosure that you read from the securities ..
18 filing says that there could be problems in connection with
19 that relief. But wouldn't that be a factor to be taken into
20 account when the investments here were made, who was making
21 them, and whether there were forum selection clauses in the
22 contracts?

23 MR. BERNARD: Yes. Your Honor. I think it is
24 relevant. As I stand here now, I don't recall the date of the
25 Sibneft offering, and I think that obviously that would — that

1 MR. MARKS: Yeah.

2 THE COURT: That's not in the record, is it?

3 MR. MARKS: It is not in the record, Your Honor.

4 That — which was — to go back where I was, if Your Honor
5 wanted us to supplement the record on whether courts in Tumen
6 can be corrupted, we could easily do that.

7 THE COURT: Oh, the — the record in the case is, at
8 this point, five boxes. And I think that the — that the
9 record is — that the parties have had ample opportunity to put
10 in what they wish to put in in the record.

11 There is — I have identified about three issues in
12 the record that I saw that needed to be amplified: the
13 plaintiffs who are U.S. companies' directors, shareholders,
14 officers, business in the United States, the contracts of Mikom
15 and Nexis, and if there is another contract that the parties
16 believe is centrally involved in the case, such a contract, and
17 I would need a — some translation, not of the whole contract
18 if it's in Russian, but of any choice of law or forum or
19 arbitration clause.

20 And finally, both sides' submission on — unless
21 either side believes that it's fully indicated in your
22 affidavits already, and I'm perfectly happy to accept that and
23 to look at the specific provisions that I've been cited to —
24 the issue of is there a claim under Russian law the equivalent
25 of RICO, fraud, or whatever, what court or courts could that be

1 brought in, and the — if the parties wish to go into it, the
2 procedures available in those — in those courts.

3 Again, the parties may think that it's — and both
4 sides have cited to me their expert affidavits so far, and I —
5 I'm — you know, if the parties wish to rely upon that, that's
6 fine. But I wanted to give the parties that opportunity. Go
7 ahead, Mr. Marks. I didn't want to interrupt you.

8 MR. MARKS: Fine, Your Honor. I would move over
9 generally to some specific issues that I want to discuss on
10 comity. One more thing I would suggest to Your Honor in terms
11 of Moscow — we don't believe, and we agree with Mr. Burrows,
12 that if there were claims for fraud, which we don't think
13 exist, that they would have to be brought in the Sverdlosk
14 region for GOK and Kemerovo for NKAZ.

15 This is, of course, totally different than the GOK
16 shareholders who have brought claims, because there's never
17 been any resolution against them in Russia in a case in which
18 they were either named or served. In each of their instances
19 — there is four of them — Davis — there's no litigation
20 whatsoall [sic] — whatsoall against Davis.

21 There's no proceedings that have made any findings
22 against Davis in Russia. Under — under typical proceedings of
23 comity, if there's parallel actions, you allow them to go
24 forth.

25 Omni lost its shares when it wasn't even named as a

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January 23, 2003

TO BE FILED UNDER SEAL

BY HAND DELIVERY

Honorable John G. Koeltl
United States District Judge
Southern District of New York
500 Pearl Street, Room 1030
New York New York 10007

Re: **Base Metal Trading SA, et al. v. Russian Aluminum, et al.**
00 Civ. 9627 (JGK)

Dear Judge Koeltl:

We are writing on behalf of the defendants originally sued before the complaint was amended.¹

We write to advise Your Honor of developments in an arbitration proceeding (discussed in defendants' pending motions to dismiss), involving claims closely related to the claims in this case, which has been pending in Zurich, Switzerland since January 11, 2001 (about one month after this action was filed). That arbitration was commenced by plaintiff Base Metal Trading SA ("BMT SA") (the plaintiff listed first in the caption of the instant case) against defendant Novokuznetsk Aluminum Plant ("NKAZ") (an original defendant in the instant case and the aluminum plant which is at the heart of the aluminum allegations) under the International Arbitration Rules of the Zurich Chamber of Commerce.

The Zurich arbitration was based on the same contracts that BMT SA pleaded in the original complaint. Compl. ¶ 17. In their initial motions to dismiss, filed in May of 2001,

¹ Those defendants are: Russian Aluminum, Sibirskaia Aluminum (Russia), Sibirskaia Aluminum Products USA Corp., Bauxal Management, S.A., Metcare Management, S.A., Unimetal Limited, S.A., Mr. Oleg Deripaska, Mr. Mikhail Chernoi, Chernoi Companies 1 to 10 and Novokuznetsk Aluminum Zavod. The original plaintiffs, before the complaint was amended, are Base Metal Trading SA, Base Metal Trading Ltd. and Alucor Holdings Ltd. Those plaintiffs are defined in the complaint as the "BMT Plaintiffs" and are sometimes also referred to as the "Aluminum Plaintiffs."

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the original defendants called the Court's attention to this duplicative action, as well as two others relating to contracts between NKAZ and the other two original plaintiffs – Base Metal Trading Ltd. ("BMT Ltd.") and Alucoal Holdings Ltd. ("Alucoal").² Plaintiffs then amended the complaint and dropped the cause of action for breach of contract, but plead interference with those same contracts. Am. Compl. ¶¶ 593-95. Defendants' motions (filed in January of 2002) to dismiss the amended complaint again dealt with those contracts. See Memorandum Of Law In Support Of Motion To Dismiss The First Amended Complaint On *Forum Non Conveniens* Grounds, at 6-7, n.3.

The arbitrator in Zurich, Dr. Marc Blessing, first took up the issue of jurisdiction and has now reached a decision. In a 144-page Award,³ a copy of which is enclosed herewith, Dr. Blessing dismissed the arbitration, holding that the arbitration agreement upon which BMT SA relied "is invalid, null and void;" and "[c]onsequently, the Arbitrator lacks arbitral jurisdiction"⁴ Award, p. 143, ¶¶ 1, 2. Costs and attorneys' fees were awarded against BMT. Dr. Blessing stated:

Basically, the only judicial remedy for Claimant's complaints about the irregularities that allegedly occurred in Kemerovo would be appropriate administrative actions and court actions before the competent Russian authorities, and the present Arbitrator cannot exercise or arrogate to himself a jurisdiction in that respect.

Award, ¶ 398, *see also* ¶ 283. Dr. Blessing characterized BMT SA's actions as seeking a "second bite at the apple" (Award, ¶ 399), or even a "third bite":

To conclude this Chapter, the Arbitrator recognises Claimant's significant effort to overcome the *lis pendens* defence; yet, its effort is not fully convincing. It rather appears that Claimant, after having submitted its claims against NKAZ in the Russian bankruptcy proceedings, first tried to "*have a second bite at the apple*" by having its monetary claims submitted in the framework of the RICO complaint filed in December 2000, and thereafter - moreover - aimed to even have a "*third bite at the apple*," by initiating the present Arbitration.

Award, ¶ 298 (emphasis in original).

² In addition to BMT SA, the two other Aluminum Plaintiffs BMT Ltd. and Alucoal filed similar arbitration proceedings in Stockholm and Cyprus, respectively. NKAZ is seeking dismissal of those proceedings as well.

³ Dr. Blessing, recognizing the length of his Award, has provided a guide "For the hurried Reader" at page 3.

⁴ The consequence of this decision is that these contract disputes are arbitable, but not in Zurich.

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The Award makes numerous references to the instant action before Your Honor (referred to by Dr. Blessing as the "RICO case" or the "RICO" complaint), including:

It rather seems that the monetary claims of, and damages allegedly suffered by, BMT SA had been referred to in the RICO proceedings not only for mere argument's sake, but were in fact referred to, even in the amended complaint, in order to support the causes of action of the various RICO plaintiffs in the RICO proceedings. It thus appears that the monetary claims underlying the present arbitration had also been incorporated and factored into MIKOM's RICO complaint, and somehow form part of the quantification of that complaint, resulting in claimed treble damages in the amount of US\$ 2.7 billion.

Award, ¶ 293 (emphasis in original).

In the RICO case, BMT SA, BMT Ltd, Alucoal and MIKOM are represented by the same lawyers, including Bruce Marks who also acted for BMT SA in connection with the bankruptcy.

Award, ¶ 368. See also Award, p. 126 and ¶ 363.

The Arbitrator also found common control of the three Aluminum Plaintiffs and plaintiff MIKOM. Defendants' *forum non conveniens* motion argues that the plaintiffs are principally Russian companies, or companies with undisclosed Russian ownership, an issue relevant to the weight to be given to the plaintiffs' choice of forum, and to the balancing of the private and public interest factors. See Sibirskey Def. Mem. at 8, 17; Sibirskey Def. Reply Mem. at 1, 2. Plaintiffs declined in their opposition papers to identify the ownership of the Aluminum Plaintiffs (as well as to identify the ownership of the GOK plaintiffs). Indeed, in the Second Declaration of Mikhail Zhivilo, dated September 16, 2002, submitted by plaintiffs in opposition to defendants' motions to dismiss, Mr. Zhivilo states that he is "the President (General Director)" of plaintiff MIKOM, but he fails to reveal his relationship with the Aluminum Plaintiffs, BMT SA, BMT Ltd. and Alucoal. The relationship between the Aluminum Plaintiffs and Mr. Zhivilo's ownership of them is, however, a key conclusion of the Arbitrator's decision.

In this regard, the Arbitrator noted "Claimant's corporate structures, the use of 'Base Metal Trading,' the connections with BMT Ltd., the integration of Claimant within the MIKOM organisation, the co-existence of parallel contracts between NKAZ and other structures controlled by Messrs. Zhivilo, [and] the teaming-up of the BMT entities and Alucoal in the framework on the RICO complaint...." Award, p. 135. Dr. Blessing concluded:

All the above direct and circumstantial elements taken together have led the Arbitrator to clearly conclude that Mr Zhivilo was pulling the strings, controlling Claimant and its business, as he

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and his brother at the same time pulled the strings in respect of MIKOM and NKAZ.

* * *

. . . Mr. Zhivilo, when devising the CAA [Consolidated Arbitration Agreement], much less aimed to protect NKAZ' interests but, in real fact, his own interest as the ultimate controlling shareholder of Claimant and the beneficial owner/investor.

. . . Mr. Zhivilo, by signing on behalf of NKAZ, violated his inherent fiduciary duties which an organ of a Russian company owes as a matter of Russian law.

Award, p. 136 (emphasis in original).

Thus, the decision confirms that plaintiff BMT SA, and the other two original plaintiffs in this action, BMT Ltd. and Alucoal, as well as plaintiff MIKOM, are all controlled by the Russian Mikhail Zhivilo, whose activities must ultimately be judged in accordance with Russian law.

The Arbitrator awarded fees and expenses against BMT SA in the amount of approximately US\$870,000 and payment was due on January 10, 2003. BMT SA did not make payment on the due date and NKAZ served an official payment summons under Swiss Law. BMT SA then called the Arbitrator's attention to a calculation error of approximately US\$168,000 (which the Arbitrator has acknowledged), but failed to pay even the reduced amount. BMT has now, in response to the payment summons, denied the entire debt (even as reduced), compelling NKAZ to commence enforcement proceedings before the Swiss courts.

Because the rules of the Zurich Chamber of Commerce provide that the arbitral award be kept confidential "toward third parties not concerned," we are submitting it under seal,⁵ and providing copies only to the BMT (Aluminum) Plaintiffs and the original defendants. The so-called "amended" or "GOK" plaintiffs and the 11 "amended" defendants have no connection

⁵ Subject to Your Honor's direction.

Honorable John G. Koeltl
January 23, 2003
Page 5

to the aluminum claims or the NKAZ contract claims and are therefore not "concerned parties" and are not being provided with a copy of the Award.

Respectfully yours,


Michael D. Burrows
Counsel for defendants

Sibirskey Aluminum (Russia)
Sibirskey Aluminum Products USA Corp.;
Bauxal Management, SA;
Metcare Management, SA;
Unimetal Limited, SA;
Oleg Deripaska

MDB:dkm

cc: (by federal express)
Bruce S. Marks, Marks & Sokolov
Attorney for the BMT Plaintiffs and MIKOM

(by hand)
James L. Bernard, Stroock & Stroock & Lavan,
Attorneys for the BMT Plaintiffs and MIKOM

015720
(ab)

State of Utah
Department of Commerce
Division of Corporations and Commercial Code
I hereby certify that the foregoing has been filed
and approved on the 10/9/94
in the office of the Utah Division of Corporations and Commercial Code
this Certificate thereof.

Ronald S. Woods
RONALD S. WOODS
Division Director
10/9/94



ARTICLES OF ORGANIZATION

OF
NEXIS PRODUCTS LLC.

RECEIVED

OCT - 9 1996

Utah Div. of Corp. Comm. Code

The undersigned two or more persons hereby form a limited liability company pursuant to the Utah Limited Liability Company Act and adopt as the Articles of Organization of such limited liability company the following:

FIRST: The name of the limited liability company is **Nexis PRODUCTS LLC.**

SECOND: The limited liability company shall exist for a period of thirty (30) years from the date of filing of these Articles of Organization with the Secretary of State of the State of Utah.

THIRD: The purpose of the limited liability company shall be to engage in any lawful act or activity for which a limited liability company may be formed under the Limited Liability Company Act of the State of Utah.

FOURTH: The address of the principal place of business in Utah is Suite 104, 47 West 200 South, Salt Lake City, UT 84101.

FIFTH: The street address of the registered agent in Utah is Suite 104, 47 West 200 South, Salt Lake City, UT 84101. The name of the Agent at such address is All-Search.

SIXTH: The total amount of cash and a description and agreed value of property other than cash contributed will be \$50,000 (U.S. dollars fifty thousand).

SEVENTH: Additional contributions shall be made at such times and in such amounts as may be agreed by the limited liability company and the members as provided in the operating agreement of the limited liability company.

EIGHTH: The members of the limited liability company may admit additional members upon unanimous agreement and as provided by the terms set forth in the limited liability company operating agreement.

NINTH: The remaining members of the limited liability company may continue the business upon the termination of continued membership of a member in the limited liability company upon unanimous agreement and as provided by the terms set forth in the operating agreement of the limited liability company.

TENTH: Management of the limited liability company is vested in the members in accordance with their ownership interests, unless this is varied by the operating agreement. A limited liability company member may not assign, wholly or partially, the right to participate in management without the written consent of all limited liability company members.

328300108

The names and addresses of the initial members shall be as follows:

Saturn Investment Group, S.A.
Suite 302 (A Panama Corp)
East Building No. 34/20
Cuba Avenue & 34th St.
Panama City 5, Panama

Star Group Finance and Holdings, Inc. (A Panama Corp)
Suite 302
East Building No. 34/20
Cuba Avenue & 34th St.
Panama City 5, Panama

The persons executing these Articles of Organization are as follows:

Member: Saturn Investment Group, S.A.



Sid Garnett, authorized to execute Articles of Organization.

Member: Star Group Finance and Holdings, Inc.



Sid Garnett, authorized to execute Articles of Organization.

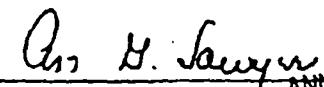
State of Delaware)
)
County of New Castle)
)

I, Sid Garnett, being duly sworn, upon oath, depose and say that I am Vice President of American Incorporators Ltd., and Sid Garnett, the attorney-in-fact for Saturn Investment Group, S.A. and Star Group Finance and Holdings, Inc., that I have read the contents of the foregoing Articles of Organization and that the statements contained therein are true and correct.



Sid Garnett

On October 3, 1996, before me personally appeared Sid Garnett, who being duly sworn by me upon his oath, deposed and acknowledged that he had read the contents of the foregoing Articles of Organization and further acknowledged the facts alleged therein are true and correct. Witness my hand and official seal. My commission expires: 4-10-97



Ann G. Sawyer
Notary Public
ANN G. SAWYER
NOTARY PUBLIC - DELAWARE
MY COMMISSION EXPIRES 4/10/97

 * 02/25/72 UTAH DEPARTMENT OF COMMERCE
 * DIVISION OF CORPORATIONS AND COMMERCIAL CODE 15:46:0

LIMITED LIABILITY COMPANY FILE # 015720

PAGE 1

BUSINESS NAME: NEXIS PRODUCTS, LLC
 PRINCIPAL ADDRESS: 47 W 200 S STE 104
 SALT LAKE CITY UT
 84101

ORGANIZED/REGISTERED: 10/09/1996
 LAST ANNUAL RPT: / /
 COUPON:

HOME STATE: UTAH
 STATUS CODE: 2

STATUS: INVOLUNTARILY DISSOLVED ON 12/01/98
 SIC: 9999 NONCLASSIFIABLE ESTABLISHMENTS
 REGISTERED AGENT: DIV. OF CORP DIRECTOR
 160 E. 300 SO. 2ND FLOOR
 BOX 146705 SLC, UT
 841146705

MANAGERS

ADDITIONAL MANAGERS: NO

MEMBERS

1 SATURN INVESTMENT GROUP, S.A. CUBA AVE & 34TH ST STE302 PANAMA CITY 5 PANAMA	FILE #
2 STAR GROUP FINANCE AND HOLDINGS, INC. CUBA AVE & 34TH ST STE302 PANAMA CITY 5 PANAMA	FILE #

ADDITIONAL MEMBERS: NO

REMARKS

01 11-01-97 DELINQUENT FOR FAILURE TO FILE AN ANNUAL REPORT.	<-
02 MAILED TO: ALL-SEARCH 47 W 200 S STE 104	<-
03 SALT LAKE CITY UT 84101	<-
04 12-01-97 SUSPENDED FOR FAILURE TO FILE AN ANNUAL REPORT.	<-
05 MAILED TO: ALL-SEARCH 47 W 200 S STE 104	<-
06 SALT LAKE CITY UT 84101	<-
07 03-19-98 AGENT RESIGNED, NOTICE SENT TO SATURN INVESTMENT GROUP, CUBA	<-
08 AVENUE AND 34TH STREET, STE 302, PANAMA CITY 5 PANAMA (DTM)	<-
09 12-01-98 INVOLUNTARY DISSOLUTION FOR FAILURE TO FILE AN ANNUAL REPORT.	<-
10 MAILED TO: AGENT RESIGNED 03-19-98	<-
11	<-
12 12-17-98 CERTIFICATE OF INVOLUNTARY DISSOLUTION RETURNED UNDELIVERABLE (KD)	<-



State of Utah
DEPARTMENT OF COMMERCE
Division of Corporations & Commercial Code

LCR015100
Division File Number

Application for
Reinstatement of:

Must be typewritten

FILED

FEB 25 2000

Utah Div. Of Corp. & Comm. Code

Check Appropriate Box	Fee
<input type="checkbox"/> Profit Corporation	\$50.00
<input type="checkbox"/> Non-profit Corporation	\$20.00
<input type="checkbox"/> Limited Partnership	\$50.00
<input checked="" type="checkbox"/> Limited Liability Company	\$50.00

Nexis Products, LLC

(Business Entity Name)

I, Pedro Alvarez Garcia
(Print name)

hereby declare and affirm that:

I am a Member of Nexis Products, LLC
(Officer, General Partner, or Member) (Business Name)

which was involuntarily dissolved or canceled on the 1 day of Dec., 1998 under provisions of Utah law.

I hereby remedy all prior defaults and file herewith a current annual report together with the required annual report and statutory reinstatement fee.

I hereby make application for reinstatement and request the Division of Corporations and Commercial Code of the State of Utah to issue a Certificate of Reinstatement and, under penalties of perjury, I declare that the foregoing statement is, to the best of my knowledge and belief, true and correct.

*If the above mentioned corporation name is not available for use at the time of reinstatement, the following corporation name shall be used:

By: _____

 (Signature)
 Phone Number: _____
 (Home/Office phone number)

Title: MEMBER

Submit the following items with this application:

- An Annual Report showing the new registered agent's signature
- A tax letter of Good Standing from the Utah Tax Commission (if applicable)
- Your filing fee payable to the State of Utah.

State of Utah
Division of Corporations
and Commercial Code
Mail In: 160 East 300 South 2nd Fl Box 146705
Walk In: 160 East 300 South Main Floor
Salt Lake City, Utah 84114-6705
Service Center: (801) 530-4849
Fax: (801) 530-6111
Web Site: <http://www.commerce.state.ut.us>



State of Utah
DEPARTMENT OF COMMERCE
Division of Corporations and Commercial Code

Michael G. Leavitt
Governor
Douglas C. Baird
Executive Director
Lorena P. Riff-Jensen
Division Director

Heber M. Wells Building
100 East 300 South
Box 146705
Salt Lake City, Utah 84114-6705
(801) 530-4949
(801) 530-6458 (Administrative FAX)
(801) 530-6111 (Customer Service FAX)
Web Site: <http://www.commerce.utah.gov>

02/29/2000

VIA CERTIFIED MAIL

Nexis Products, LLC
Mr. Pedro Alvarez Garcia
47 West 200 South Ste 104
Salt Lake City, UT 84101

Re: GOOD STANDING/LC#015720

Dear Mr. Garcia:

The Division of Corporations and Commercial Code ("Division") has reviewed your application and it has found that your business entity should be placed in a good status. Therefore, this letter confirms the Division's decision on this matter.

At this time, the Division's electronic records will not reflect this decision. However, the electronic record will be updated as soon as the Division's system upgrade is completed. In order to assist you with the situation, attached you will find a "Certificate of Existence."

Once again, it has been a pleasure to working with you to address this issue. If the Division can assist you further, please contact Karen Medley at (801) 530-6022 or review the Division's Homepage at www.commerce.state.ut.us.

Sincerely,

Lorena Riff-Jensen
Director & General Counsel
Lriff@br.state.ut.us

CC: Karen Medley, Legal Assistant, Division of Corporations and Commercial Code



State of Utah

DEPARTMENT OF COMMERCE

Division of Corporations and Commercial Code

Miller M. Wells Building

100 East 300 South

Suite 140708

Salt Lake City, Utah 84114-5708

(801) 530-4849

(801) 530-6438 (Administrative FAX)

(801) 530-6111 (Customer Service FAX)

Michael Q. Lovvold
Chairman
Douglas C. Berlin
Executive Director
Lorraine P. Ratto
Division Director

LC 015720

DONE

OCT 02 2000

C.D.C.

Utah Div of Corp & Commr Code

Greetings:

The Division of Corporations and Commercial Code has received notice of the resignation or change of your registered agent. A copy of this notice is enclosed for your records. The effective date of the resignation/change is 30 days after the "date received" stamp indicated on the document.

Each business organization is required by law to continuously maintain a registered agent in Utah. Please appoint a new registered agent and submit the completed form below to our offices within 30 days. A Corporation, Limited Partnership, Limited Liability Company or DBA is subject to suspension, revocation or cancellation if it does not file a replacement registered agent.

You may designate your new registered agent on this form and return it to the Division offices. If you have any questions, please call (801) 530-4849.

Sincerely,

Lorraine Ratto, J.D., M.P.H.
Director
Division of Corporations and
Commercial Code

H-15-01-00-12-50

Name of Business Organization: Nexis Products, LLC.

File # _____

Type of Business Organization (Check one: Corporation, Limited Partnership, Limited Liability Partnership, Limited Liability Company, or DBA)

Old Registered Agent: ALL-SEARCH & INSPECTION, INC.

Old Registered Address: 47 WEST 200 SOUTH STE 104 SALT LAKE CITY, UTAH 84101

New Registered Agent: ALL-SEARCH & INSPECTION, INC.

New Registered Office Street Address: 1108 EAST SOUTH UNION AVE MIDVALE, UTAH 84047

The above changes were authorized by resolution of the governing board as required of our business organization by state law. We declare that this information is, to the best of our knowledge and belief, true, correct and complete.

Bruce Evans

Signature of NEW Registered Agent

Signature of authorized Corporate Officer, General Partner, Member or Appointee

Printed on recycled paper
Recycled 08-18-00 MEA

1/08 2002 13:50 FAX 9334614

MARKS&SOROLOV

PH BMT

003

GENERAL POWER OF ATTORNEY

THIS POWER OF ATTORNEY is made by this Fifteenth day of November 2000

KNOW ALL MEN PRESENT that we:

NEXIS PRODUCTS L.L.C.
47 West 200 South, Suite 104, Salt Lake City, Utah, 84101 USA.

ACTING by Resolution of the Members this Fifteenth day of November 2000 and in accordance with our Certificate of Formation and Limited Liability Company Operating Agreement (hereinafter called "the Company") we hereby appoint:

ASHIKHMINA MARINA
holder of passport 65 98 119961

The true and lawful Attorney in fact of the Company (hereinafter called "the Attorney") for and in the name of and on behalf of the Company to do or to execute all or any of the facts and things hereinafter mentioned that is to say:

1) to conduct cases the Company involved in all courts of Russian Federation with the rights, given to the plaintiff, defendant, the third person, applicant and sufferer including the right of signing and presenting of actions, with the right of presenting of a complaint to the Court of appeal and a complaint in order of supervision, applications of allotments and solicitation, with the right of substitution of the subject and basis of an action, receipt of judgments, decisions, executive lists and legal orders, other documents; to accomplish all the actions, connected with the execution, to produce and to recall executive documents, to arouse an executive production, with the right of receipt of executive list and producing it to a penalty, of appeal the actions of legal executor, to hand in any applications on behalf of the decrees, decisions and the other legal documents, to produce proofs on a case with the right of receipt of a property and money awarded;

2) to represent interests of the Company as an applicant with the producing executive list to any juridical organizations and/or persons, government bodies of Russian Federation, organs and/or organizations for what the Company gives the Attorney the right to produce for execution to any debtors on the territory of Russian Federation any executive lists, given to the Company by any courts (People's Court, Court of Arbitration, etc.) of Russian Federation, on the base of any decrees, sentences, decisions and resolutions of these Courts (judges), including on the ban to the debtors to accomplish the definite actions, to be present at the execution of legal deeds, to accomplish a control of the execution of legal deeds;

3) to sign for the Company and also on the whole to accomplish any other juridical and actual actions on behalf of the Company. In the case if the Attorney accomplish any juridical and actual actions with the direct or indirect power of Attorney, these deeds will be valid.

4) to represent in complete volume interests of the Company in all State, municipal, commercial and other organizations and establishments, including in the

company «Panorama» Ltd. (Moscow), joint-stock company «VRK» (Katerinburg, Lenina str., 28) so Company let him accomplish all the necessary actions for opening of personal accounts in the books of registration of the stockholders, which are conducted by «Panorama» Ltd. or «VRK» Ltd., to sign the transmission and any other orders on behalf of the Company, to pass on «Panorama» Ltd. or «VRK» Ltd. all the necessary documents connected with the opening of personal accounts, registration of purchase and selling of shares, to produce for execution any executive lists and other legal statements, to accomplish any requirements, including a receipt of notification, to receive any documents in «Panorama» Ltd., «VRK» Ltd. including letters, notifications, rejections, etc.

Powers by this Power of Attorney may be passed on other persons.

AND IT IS HEREBY AGREED THAT:

(1) This Power of Attorney shall remain in force within Fifteenth day of November 2001 or until notice of the Company having revoked the same shall have been received by the said Attorney or by the Company Secretary to whom all enquiries regarding its validity should be addressed whichever is the earliest.

We hereby authenticate the sign of our Attorney as herein below:

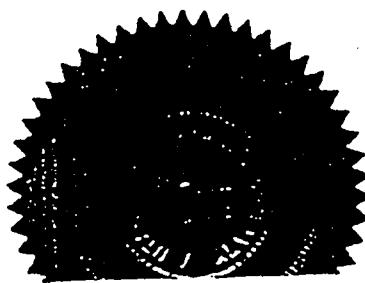
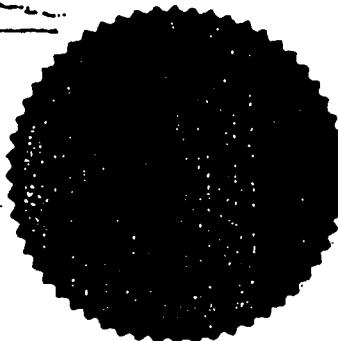
IN WITNESS whereof the seal of the Company has been hereunto affixed this
Sixth day of November 2000.

In the name and on behalf of
STAR INVESTMENT GROUP, S.A.

In the name and on behalf of
STAR GROUP FINANCE & HOLDINGS, INC.



Sydney Taxariz



ARTICLES OF ORGANIZATION OF
DAVIS INTERNATIONAL L.L.C.

FILED
DEC. 01 1998
THE OFFICE OF
SECRETARY OF STATE
WEST VIRGINIA

The undersigned two or more persons hereby form a limited liability company pursuant to the West Virginia Limited Liability Company Act and adopt as the Articles of Organization of such limited liability company the following:

FIRST: The name of the limited liability company is Davis International L.L.C.

SECOND: The limited liability company shall exist for a period of thirty (30) years from the date of filing of these Articles of Organization with the Secretary of State of the State of West Virginia.

THIRD: The purpose of the limited liability company shall be to engage in any lawful act or activity for which a limited liability company may be formed under the Limited Liability Company Act of the State of West Virginia.

FOURTH: The address of the principal place of business in West Virginia is 1205 Wilkie Drive, Charleston, WV 25314-1726.

FIFTH: The street address of the registered agent in West Virginia is 1205 Wilkie Drive, Charleston, WV 25314-1726. The name of the Agent at such address is Barbie Dallman.

SIXTH: The total amount of cash and a description and agreed value of property other than cash contributed will be \$50,000 (U.S. dollars fifty thousand).

SEVENTH: Additional contributions shall be made at such times and in such amounts as may be agreed by the limited liability company and the members as provided in the operating agreement of the limited liability company.

EIGHTH: All debts, obligations and liabilities are those of the limited liability company.

NINTH: The members of the limited liability company may admit additional members upon unanimous agreement and as provided by the terms set forth in the limited liability company operating agreement.

TENTH: The remaining members of the limited liability company may continue the business upon the termination of continued membership of a member in the limited liability company upon unanimous agreement and as provided by the terms set forth in the operating agreement of the limited liability company.

ELEVENTH: The name and address of the person authorized to execute the Articles of Organization is Janet M. Caruccio, 1220 N. Market St., Suite 606, Wilmington, DE 19801.

TWELFTH: Management of the limited liability company is vested in the members in accordance

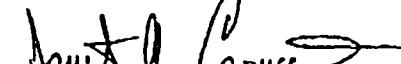
with their ownership interests, unless this is varied by the operating agreement. A limited liability company member may not assign, wholly or partially, the right to participate in management without the written consent of all limited liability company members. The names and addresses of the initial members shall be as follows:

Saturn Investment Group, S.A.
Suite 302
East Building No. 34/20
Cuba Avenue & 34th St.
Panama City 5, Panama

Star Group Finance and Holdings, Inc.
Suite 302
East Building No. 34/20
Cuba Avenue & 34th St.
Panama City 5, Panama

The persons executing these Articles of Organization are as follows:

Member: Saturn Investment Group, S.A.

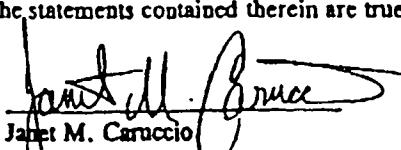

Janet M. Caruccio, authorized to execute Articles of Organization.

Member: Star Group Finance and Holdings, Inc.

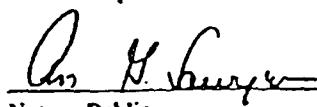

Janet M. Caruccio, authorized to execute Articles of Organization.

State of Delaware)
)
County of New Castle)

I, Janet M. Caruccio, being duly sworn, upon oath, depose and say that I am General Manager of American Incorporators Ltd., and Janet M. Caruccio, the attorney-in-fact for Saturn Investment Group, S.A. and Star Group Finance and Holdings, Inc., that I have read the contents of the foregoing Articles of Organization and that the statements contained therein are true and correct.


Janet M. Caruccio

On November 30, 1998, before me personally appeared Janet M. Caruccio, who being duly sworn by me upon his oath, deposed and acknowledged that he had read the contents of the foregoing Articles of Organization and further acknowledged the the facts alleged therein are true and correct. Witness my hand and official seal. My commission expires: 4-10-99


Ann G. Sawyer
Notary Public ANN G. SAWYER
 NOTARY PUBLIC - DELAWARE
 MY COMMISSION EXPIRES 4/10/99

